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OF COUNSEL

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WAYNE H. SCOTT

FILE COPY

July 10, 2007

Via Hand Delivery

Michael Donovan
Superior Court Department
Civil Business
County Courthouse, 12th Floor
Three Pemberton Square
Boston, MA 02108

RECEIVED

JUL 11 2007

DEP
NORTHEAST REGIONAL OFFICE

Re: New Ventures Associates, LLC
vs. Department of Environmental Protection and Arleen O'Donnell, Acting
Commissioner

Dear Clerk Donovan:

With reference to the above-entitled action, please find enclosed the following documents:

1. Complaint and Petition for Review Pursuant to M.G.L., C.30A;
2. Check in the amount of \$285.00 to cover costs of filing the complaint and two (2) summonses; and
3. Civil Action Cover Sheet.

Kindly file same. Thank you for your assistance.

Sincerely,


Richard A. Nylen, Jr.

RAN/kad
Enclosures

July 10, 2007
Page 2

cc: Mr. William Thibeault, New Ventures Associates, LLC
Mr. John A. Carrigan
Matthew C. Ireland, Esq.

H:\Thibeault, William\2007 NVLLC\
APPEAL 06-2007-Litter Control\Filing Letter to Suffolk Sup. Ct. 07-10-07.doc

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
C.A. NO.

New Ventures Associates, LLC,
Plaintiff,

v.

Department of Environmental Protection
and Northeast Regional Bureau of Waste
Prevention,
Defendants.

COMPLAINT
AND PETITION FOR REVIEW
PURSUANT TO M.G.L. C. 30A

I. INTRODUCTION

This matter involves an appeal pursuant to M.G.L. c. 30A§14 filed on behalf of New Ventures Associates, LLC (“Plaintiff” or “New Ventures”) against the Department of Environmental Protection (the “Department” or “Defendant”) and its Northeast Regional Bureau of Waste Prevention (the “Bureau”) for the improper issuance of a Final Decision by the Department requiring additional conditions for a litter control plan at the Crow Lane Landfill (the “Landfill”) in Newburyport, Massachusetts. Plaintiff requests that this Court find that the Department’s Final Decision was arbitrary and capricious, and contained errors of law and must be set aside.

As grounds for this appeal, the Plaintiff states that the Department applies a higher and incorrect standard and requires soil to be placed on the Landfill without basis and in contravention of an agreed to Preliminary Injunction. The Decision was issued by the Department to circumvent the Preliminary Injunction and is not supported by the facts.

II. PARTIES

1. Plaintiff, New Ventures Associates, LLC (“New Ventures”), is a Limited Liability Corporation with an address of 87 Boston Street, Everett, Suffolk County, Massachusetts, duly organized under the laws of Massachusetts.

2. Defendant, Department of Environmental Protection, is a state agency established by M.G.L., c. 21A which has the regulatory authority over activities pursuant to M.G.L., c.111, §150A.
3. Defendant, Northeast Regional Bureau of Waste Prevention is an office within the Department of Environmental Protection that issued the Modified Conditional Approval and Final Decision.

III. BACKGROUND

4. This matter involves the Plaintiff's closure of the Crow Lane Landfill, a previously inactive, unlicensed landfill located at Crow Lane, Newburyport, Massachusetts. Plaintiff's predecessor did not close the Landfill in accordance with the Department's rules and regulations during its ownership. The predecessor disposed of municipal waste, sludge and other materials through 1972. The Plaintiff purchased the Landfill in 2000, entered into an Administrative Consent Order ("ACO") in 2003, and agreed to a Preliminary Injunction (the "Order") with the Department for the closure in October 2006.
5. The Order was amended in November 2006 and February 2007 and established the terms of the closure.
6. Under the terms of the closure, New Ventures is authorized to dispose of construction and demolition debris (C&D) materials to bring the Landfill to its final grade and shape. No municipal waste is allowed in the closure. New Ventures is required to install a gas extraction system that collects the Landfill gas, pipes it to a series of treatment tanks to reduce sulfur and then discharges the gas to an enclosed flare while it is combusted. New

Ventures is required to cap the Landfill with an impervious membrane and to cover the membrane with twelve inches of soil and seed.

7. The Department of Environmental Protection issued an Administrative Order on April 13, 2007 claiming that there was litter on and off-site in violation of the Department's solid waste regulations. The Order requested that New Ventures submit a litter control plan within seven (7) days.
8. The Administrative Order was sent by certified mail on Friday, April 13, 2007 and received on Tuesday, April 17, 2007, as Monday, April 16, 2007 was a state holiday.
9. On or about April 25, 2007, New Ventures submitted a four-point plan that completed with the Department's request. New Ventures had also commenced its litter clean up.
10. Under the terms of the its Litter Control Plan, New Ventures performed the following work:
 - a. Trucks entering the facility shall have tarps covering their loads upon arrival. This will be verified by on-site personnel. The tarps will not be removed until the vehicle arrives at the Active Material placement area.
 - b. Tarps previously maintained on the inactive portions of the Landfill with sandbags will be replaced by six (6") inches of soil. Landfill areas that are now considered as being inactive will also receive a six (6") inch layer of cover soils to prevent wind blown litter.
 - c. Litter is picked up on a weekly basis, weather permitting, on-site, with a seasonal cleaning in the spring. More frequent policing of the site perimeter for litter will be performed as needed. Street sweeping utilized to clean up litter along Crow Lane.

- d. A snow fence is maintained on the Crow Lane side of the Landfill (south side) to catch litter. The existing fencing will be reset and maintained to prevent fugitive wind blown litter.
- 11. Plaintiff had presented evidence that it had a litter control plan and it had cleaned up the area with its letter dated April 25, 2007.
- 12. On May 2, 2007, the Department responded to New Ventures' litter plan with a Conditional Approval that added excessive and unnecessary requirements.
- 13. The Plaintiff disagreed that the Department's blown litter response requirements were excessive. At no time did the Plaintiff agree to the Department's blown litter plan.
- 14. The approval addressed unnecessary conditions. New Ventures was opposed to the Conditional Approval and requested that it be reviewed pursuant to 310 CMR 19.037(4)(b).
- 15. On May 21, 2007, New Ventures requested that the Conditional Approval be modified. Plaintiff requested that the Department rescind its Conditional Approval pursuant to 310 CMR 19.037.
- 16. The Department did not rescind the Conditional Approval.
- 17. In addition to the Conditional Approval, the Department issued an Administrative Penalty and Unilateral Administrative Order ("UAO") regarding the same matter, litter control.

18. Plaintiff filed an appeal of the Department's Administrative Penalty and Unilateral Order for the blown litter plan to the Department under the rules for Adjudicatory Hearing.
19. The Department is pursuing two (2) separate venues to require a litter control plan.
20. The Department's UAO required New Ventures to place 6 inches of soil on top of active areas to control litter. This requirement was appealed by New Ventures as excessive.
21. On or about June 12, 2007, the Department issued a Modified Conditional Approval pursuant to 310 CMR 19.037 that also requires the placement of 6 inches of soil on top of active areas on a daily basis to control litter.
22. The Defendant Department committed error assessing separate regulatory burdens and requirements under separate regulations.
23. The Order requires the C&D material placed on active areas to be mixed with soil on a one to one basis.
24. The Order establishes that active areas do not require the placement of soils on a daily basis. The Order requires placement of tarps on soils upon inactive areas.

25. There is nothing in the Record that establishes that there is a nexus between alleged litter and the active areas.
26. New Ventures has adopted a litter plan to control litter.
27. There are insufficient soils to meet this requirement as well as the requirement that C&D materials are mixed on a one to one basis. This is excessive.
28. The Defendant Department has erred in circumventing the Order and its Administrative Order.
29. Plaintiff, as a party to an Adjudicatory Hearing on this matter, has rights pursuant to 310 CMR 1.01(5)(b) to:
 - a. Present witnesses;
 - b. Present and establish relevant facts by oral or written testimony and documentary evidence.
 - c. Advance pertinent arguments de novo review.
 - d. Refute testimony including an opportunity to cross-examine adverse witnesses; and
 - e. Examine and introduce pertinent documents.
30. The Defendant Department's action has deprived Plaintiff of its right to pursue the determination of a litter control plan through the Administrative Hearing process.

31. Plaintiff's response to the Department outlined the basis for compliance with regulatory requirements.
32. The Department failed to present evidence that the New Ventures litter control was ineffective.

COUNT 1
Error of Law; 30A Appeal

33. Plaintiff hereby incorporates and realleges the facts and statements contained in paragraphs 1-32, above.
34. The Department has adopted rules and regulations for Adjudicatory Hearings and the issuance of Final Decisions at 310 CMR 1.00.
35. The process allows a party to challenge decisions of the Department on a de novo basis.
36. A Unilateral Order was issued by the Department in 2007 requiring a litter control plan.
37. Plaintiff's Request for Adjudicatory Hearing was timely filed.
38. There was no legal basis for the Department to issue another Order under a different administrative review process.
39. The Department's decision denies the administrative review and right to cross examination and submission of testimony.
40. The Department's decision is contrary to the requirements of the Order.
41. The Final Decision is excessive without substantial evidence that Plaintiff's litter control plan is not effective or sufficient.

42. The Final Decision is not supported by evidence that the excessive soils will reduce litter.

COUNT II
Denial of Due Process

43. Plaintiff hereby incorporates and realleges the facts and statements contained in paragraphs 1-42, above.
44. Plaintiff is entitled to proceed as a party in the Adjudicatory Hearing.
45. The Modified Conditional Approval and Final Decision denies Plaintiff's statutory and constitutional rights of due process to an adjudicatory proceeding.

RELIEF SOUGHT

1. Plaintiff hereby requests that the Court order the Department to rescind the Final Decision and order the Adjudicatory Hearing to proceed.
2. Plaintiff requests the Court find that the Department's decision was arbitrary and capricious, an error of law and is not supported by substantial evidence.
3. Plaintiff requests such other relief at law or in equity as the Court may allow.

Respectfully Submitted,
New Ventures Associates, LLC
By Its Attorney,

Richard A. Nylen, Jr.
Lynch, DeSimone & Nylen, LLP
12 Post Office Square, Suite 600
Boston, MA 02109
(617) 348-4500

Dated: July 10, 2007

42. The Final Decision is not supported by evidence that the excessive soils will reduce litter.

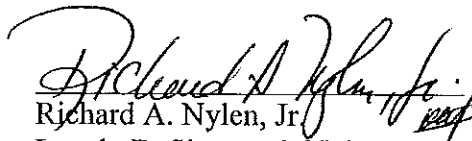
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Respectfully Submitted,
New Ventures Associates, LLC
By Its Attorney,


Richard A. Nylén, Jr.
Lynch, DeSimone & Nylén, LLP
12 Post Office Square, Suite 600
Boston, MA 02109
(617) 348-4500

Dated: July 10, 2007

**CIVIL ACTION
COVER SHEET**

DOCKET NO.(S)

**Trial Court of Massachusetts
Superior Court Department**
County: Suffolk



PLAINTIFF(S)

New Ventures Associates, LLC

DEFENDANT(S)

Department of Environmental Protection and
Northeast Regional Bureau of Waste Prevention

ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE 617/348-4500

Richard A. Nysten, Jr., Esq.

Lynch DeSimone & Nysten, LLP, 12 Post Office Sq.

Board of Bar Overseers number: 375280

ATTORNEY (if known)

Origin code and track designation

Place an x in one box only:

- ☒ 1. F01 Original Complaint
☐ 2. F02 Removal to Sup.Ct. C.231,s.104
(Before trial) (F)
☐ 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)

- ☐ 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)
☐ 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
☐ 6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?
<u>E02</u>	<u>30A Appeal</u>	<u>(X)</u>	() Yes (<input checked="" type="checkbox"/>) No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

A. Documented medical expenses to date:

- | | |
|--|----------|
| 1. Total hospital expenses | \$ |
| 2. Total Doctor expenses | \$ |
| 3. Total chiropractic expenses | \$ |
| 4. Total physical therapy expenses | \$ |
| 5. Total other expenses (describe) | \$ |

Subtotal \$

- | | |
|--|----------|
| B. Documented lost wages and compensation to date | \$ |
| C. Documented property damages to date | \$ |
| D. Reasonably anticipated future medical and hospital expenses | \$ |
| E. Reasonably anticipated lost wages | \$ |
| F. Other documented items of damages (describe) | \$ |

G. Brief description of plaintiff's injury, including nature and extent of injury (describe)

\$
TOTAL \$

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

Richard A. Nysten

DATE: 7-10-07